

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK MAIN OFFICE (SYRACUSE)**

RACHEL COLANGELO and
KATHLEEN PARADOWSKI,
individually and on behalf of a class of
similarly situated individuals,

Plaintiffs,

v.

CHAMPION PETFOODS USA INC.
and CHAMPION PETFOODS LP,

Defendants.

CIVIL ACTION NO.: 6:18-cv-01228-LEK-ML

**DEFENDANTS CHAMPION PETFOODS
USA INC. AND CHAMPION PETFOODS
LP'S L.R. 7.1(A)(3) STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to Local Rule 7.1(a)(3), Defendants Champion Petfoods USA Inc. and Champion Petfoods LP (collectively, “Champion”), respectfully set forth the following material facts about which they contend there exists no genuine issue of fact:

Background of Champion Petfoods:

1. In approximately 1979, Champion’s founder, Reinhard Muhlenfeld began producing dog food in a feed mill, and in approximately 1985 launched the ACANA brand, which was similar to traditional dry kibble pet food. Declaration of Chinedu Ogbonna, (“Ogbonna Dec.”) attached to Declaration of David A. Coulson as “**Exhibit 1**,” at ¶ 7.

2. In approximately 2005, Champion developed its ORIJEN brand, which is based on a Biologically Appropriate nutritional philosophy, which unlike dog foods that rely on basic grains and/or other fillers and many synthetic nutritional supplements, uses animal-based proteins to attempt to mirror how wolves or wild dogs would get nutrition in nature (albeit within the limitations of dry kibble form). *Id.*; Deposition of Peter Muhlenfeld dated December 4, 2018 (“Muhlenfeld Dep.”), attached to Declaration of David A. Coulson as “**Exhibit 2**,” at 122:16-22;

136:17-147:19; *see* Declaration of Jeff Johnston, attached to the Declaration of David A. Coulson as “**Exhibit 3**,” at ¶ 11.

3. Subsequently, ACANA adopted this nutritional philosophy and modified its formulas accordingly. Muhlenfeld Dep. at 136:17-23; Ogbonna Dec. at ¶ 7.

4. Champion sells a wide variety of dog food diets (*i.e.*, formulations) under its brand names ORIJEN and ACANA. Second Amended Complaint (“SAC”) ¶ 20; Ogbonna Dec. at ¶ 8.

5. In the United States, the ACANA brand is a family comprised of three sub-brands: Heritage, Regionals, and Singles. Ogbonna Dec. at ¶ 8.

6. Beginning in approximately 1990, Champion manufactured all of its dog food out of its NorthStar kitchen, in Morinville, Alberta, Canada. Declaration of Christopher Milam, (“Milam Dec.”), attached to the Declaration of David A. Coulson as “**Exhibit 4**,” at ¶ 8.

7. In approximately January 2016, Champion opened its new DogStar kitchen in Kentucky and throughout 2016 transitioned the manufacturing of nearly all of its dog food sold in the United States (except for Alaska) to come exclusively from its new DogStar kitchen, with the exception of the diet ORIJEN Tundra. Milam Dec. at ¶ 9.

Plaintiff’s Dogs and Her Purchases of Champion Dog Food:

8. Plaintiff’s first purchase of Champion dog food was in 2014 when she purchased ORIJEN Puppy Large Breed, manufactured at Champion’s NorthStar kitchen.¹ Deposition of Plaintiff Kathleen Paradowski (“Paradowski Dep.”), dated October 28, 2020, attached to the Declaration of David A. Coulson as “**Exhibit 5**,” at 45:1-4; 49:25-50:17; *Id.* Ex. 3; *see generally* Milam Dec. at ¶¶ 8-10.

¹ Plaintiff dropped her claims based on her purchases of this diet. ECF No. 115.

9. When her dogs outgrew the puppy food, the next diet she purchased was ORIJEN Regional Red, also out of NorthStar, and later out of DogStar.² Paradowski Dep. 45:1-4; 57:20-22; *Id.* Ex. 3; *see generally* Milam Dec. at ¶¶ 8-10.

10. Plaintiff also purchased DogStar ACANA Singles Pork & Squash,³ and ACANA Heritage Free-Run Poultry and ACANA Regionals Meadowlands, which are poultry-based diets, in mid-2016. Paradowski Dep. 53:4-9; 53:24-54:4; 55:13-16; *Id.* Ex. 3.

11. Plaintiff stopped purchasing Champion dog food altogether in early 2018. Paradowski Dep. 59:10-16; 62:16-23; 67:22-68:5.

12. Plaintiff's two dogs consumed Champion diets for approximately four years, and are healthy other than having allergies. Defendants' Expert Report of Robert H. Poppenga, DVM, PhD, DABVT ("Poppenga Report") served in this action, executed February 19, 2021, attached to the Declaration of David A. Coulson as "**Exhibit 6**," at 32.

"Biologically Appropriate" Statements on Champion's Packaging Purchased by Plaintiff:⁴

13. During all relevant times, the front of the packaging for the DogStar ACANA Regionals Meadowland and Heritage Free-Run Poultry diets Plaintiff purchased stated the diet was "Biologically Appropriate Dog Food." Ogbonna Dec. at ¶ 12, Ex. A (DogStar ACANA Regionals Meadowland packaging image), Ex. B (DogStar ACANA Heritage Free-Run Poultry packaging image).

14. The DogStar packaging of ACANA Meadowland and Free-Run Poultry dog food, during the period of time that Plaintiff purchased these diets, both explain "Biologically

² Plaintiff dropped her claims based on her purchases of these diets. ECF No. 115.

³ Plaintiff dropped her claims based on her purchases of this diet. ECF No. 115.

⁴ Digital images of the dog food packaging at issue can be found in Exhibits A and B to the Declaration of Chinedu Ogbonna, attached to the Declaration of David A. Coulson as "Exhibit 1."

Appropriate”: “Our foods mirror the richness, freshness and variety of meats for which dogs are evolved to eat.” Ogbonna Dec. at Ex. A, B.



15. The DogStar ACANA Free-Run Poultry bag, during the period of time that Plaintiff purchased these diets, states “your dog is a carnivore, designed by nature to thrive on whole game, fowl or fish, and possessing a biological need for foods that are rich and varied in fresh whole animal ingredients.” Ogbonna Dec. at Ex. B.

YOUR DOG IS A CARNIVORE, DESIGNED BY NATURE TO THRIVE ON WHOLE GAME, FOWL OR FISH, AND POSSESSING A BIOLOGICAL NEED FOR FOODS THAT ARE RICH AND VARIED IN FRESH WHOLE ANIMAL INGREDIENTS.

16. The DogStar ACANA Meadowland bag, during the period of time that Plaintiff purchased these diets, states it includes “ingredients [that] mirror your dog’s evolutionary diet.” Ogbonna Dec. at Ex. A.

Delivered to us FRESH or RAW, in WholePrey™ ratios, and brimming with goodness and taste, ACANA’s high inclusions and rich diversity of free-run poultry, eggs and fish ingredients mirror your dog’s evolutionary diet and nourish peak

17. The DogStar packaging of ACANA Meadowland and Free-Run Poultry dog food, during the period of time that Plaintiff purchased these diets, both describe Biologically Appropriate as “protein rich, carbohydrate limited.” Ogbonna Dec. at Ex. A, B.



18. Plaintiff thought the phrase “Biologically Appropriate” meant “the ingredients that are in the food are appropriate for a puppy ... that it would be digestible and appropriate for a puppy.” Paradowski Dep. 73:5-12.

“Fresh” Statements on Champion’s Packaging Purchased by Plaintiff:

19. Although the statements on Champion’s packaging vary by diet and other factors, Champion’s diets purchased by Plaintiff indicated that they contained, and did in fact contain, fresh ingredients, among other ingredients in other forms, such as raw, dried, dehydrated, freeze-dried, or oils. Milam Dec. at ¶¶ 15-21.

20. The DogStar packaging of ACANA Free-Run Poultry dog food, during the period of time that Plaintiff purchased these diets, describe the diet as “Free-Run Poultry Formula *with* fresh cobb chicken, turkey, and nest-laid eggs.” Ogbonna Dec. at Ex. B.



21. The DogStar packaging of ACANA Meadowland and Free-Run Poultry dog food, during the period of time that Plaintiff purchased these diets, both state they are “infused with freeze-dried chicken liver.” Ogbonna Dec. at Ex. A, B.



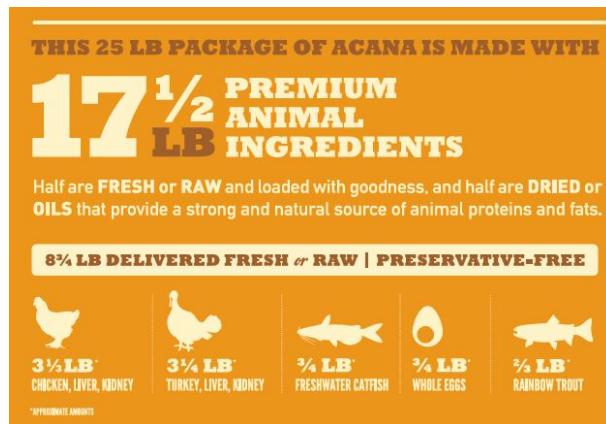
22. Plaintiff testified that she understood that freeze-dried means “similar to dehydrating” ingredients and agreed it was “correct” that “when something is freeze-dried the freezing process[] is used to create that ingredient.” Paradowski Dep. 99:4-14.

23. Plaintiff also testified that she knew that a Champion diet would consist of dried meats and freeze-dried ingredients. Paradowski Dep. 100:3-8.

24. The top left of the front of the DogStar packaging of ACANA Meadowland and Free-Run Poultry dog food, during the period of time that Plaintiff purchased these diets, both state it contains “unmatched regional ingredients FRESH OR RAW,” and the back of both packages explain their ingredients are “delivered FRESH or RAW, so they’re bursting with goodness and taste.” Ogbonna Dec. at Ex. A, B.

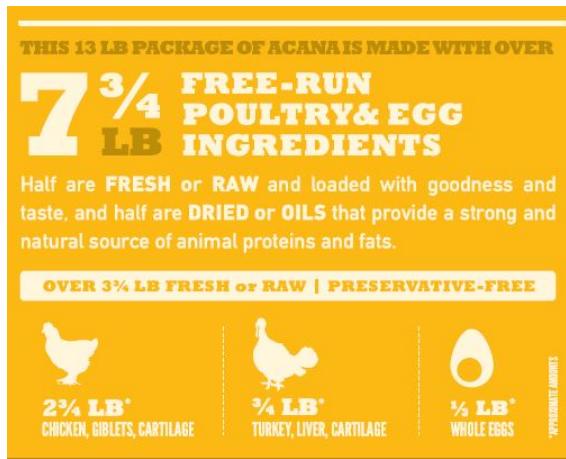
UNMATCHED REGIONAL INGREDIENTS FRESH OR RAW

25. The back of a 25-pound bag of DogStar ACANA Meadowland during the period of time Plaintiff purchased the food states “this 25 lb package of ACANA is made with 17 ½ lb [of] premium animal ingredients. Half are FRESH or RAW and loaded with goodness, and half are DRIED or OILS to provide a strong and natural source of animal proteins and fats.” Ogbonna Dec. at Ex. A.



26. The back of a 13-pound bag of ACANA Free-Run Poultry states “this 13 lb package of ACANA is made with over 7 ¾ lb [of] free-run poultry & egg ingredients. Half are FRESH or

RAW and loaded with goodness and taste, and half are DRIED or OILS to provide a strong and natural source of animal proteins and fats.” Ogbonna Dec. at Ex. B.



27. Plaintiff testified that she looked at the bag before she purchased it and understood that ACANA Meadowlands included dried ingredients and oils in the food before she purchased it. Paradowski Dep. 116:1-12 (“A. Yes. I looked at the bag before I purchased it. . . . Q. And so, when you were purchasing this product you knew that it included dried ingredients and oils; correct? . . . A. Correct. Yes.”).

28. The ACANA Meadowland and Free-Run Poultry diets Plaintiff purchased did contain poultry, eggs, fruits and vegetable ingredients that were delivered fresh to DogStar kitchen and added fresh, and in other forms, into the formulas. Milam Dec. at ¶¶ 15-21.

29. The Association of American Feed Control Officials (“AAFCO”) provides a forum for state regulatory officials to come together and create model guidelines to ensure that the regulation of animal feeds is as uniform as possible from state to state. Ogbonna Dec. at ¶ 18.

30. AAFCO defines “raw” as “food in its natural or crude state not having been subjected to heat in the course of preparation of food,” which includes ingredients that are or were frozen before being used in production. Ogbonna Dec. at ¶ 21, *id.* Ex. C.

31. The “raw” ingredients Champion used were “fresh frozen,” meaning the ingredients are frozen at the peak of freshness to preserve nutrients. Milam Dec. at ¶ 14.

32. Champion’s DogStar ACANA Regionals Meadowland and Heritage Free-Run Poultry packaging do not state that 100%, each, or all ingredients are fresh, that its ingredients are “never frozen,” or that its dog food contains no frozen ingredients. Ogbonna Dec. at ¶ 13, Ex. A, B.

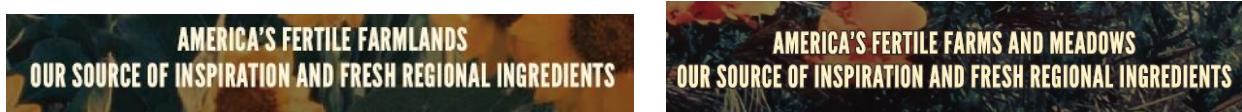
“Regional” Statements on Champion’s Packaging Purchased by Plaintiff:

33. Although the statements on Champion’s packaging vary by diet and other factors, Champion’s diets purchased by Plaintiff indicated that they contained, and in fact did contain, “regional” ingredients. Milam Dec. at ¶¶ 22-28; Ogbonna Ex. A, B.

34. The back of the DogStar ACANA Meadowland and Free-Run Poultry packages, during the period of time that Plaintiff purchased the diet, both state: “FRESH REGIONAL INGREDIENTS,” “We focus on fresh ingredients from our region that are ranched, farmed or fished by people we know and trust.” Ogbonna Dec. at Ex. A, B.



35. The DogStar packaging of ACANA Heritage Free-Run Poultry and Regionals Meadowlands, during the period of time Plaintiff purchased the diets, state that America's "fertile farmlands" and "fertile farms and meadows," respectively, are Champion's "source of inspiration and fresh regional ingredients." Ogbonna Dec. at Ex. A, B.



36. Each DogStar ACANA bag, during the period of time Plaintiff purchased the food, also states the city or county, and state where some key ingredients were sourced on the front of the packaging. Ogbonna Dec. at ¶ 14.

37. The ACANA Regionals Meadowland package, during the period of time that Plaintiff purchased the diet, accurately states that these ingredients were sourced at the following locations: "Free-Run Chicken: Mayfield, Kentucky; Free-Run Turkey: Mercer County, Ohio; Freshwater Catfish: Paducah, Kentucky; Rainbow Trout: Soda Springs, Idaho." Ogbonna Dec. at Ex. A; Milam Dec. at ¶¶ 22, 24-27.



38. The ACANA Heritage Free-Run Poultry package, during the period of time that Plaintiff purchased the diet, accurately states that these ingredients were sourced at the following locations: “free-run chicken: Mayfield, Kentucky; free-run turkey: Mercer County, Ohio; eggs: Paducah, Kentucky; vegetables and fruits: Louisville, Kentucky.” Ogbonna Dec. at Ex. B.; Milam Dec. at ¶¶ 23-27.



39. Plaintiff understood when she read the ingredient, Atlantic mackerel, on the DogStar Regional Red package, that it was sourced from the Atlantic Ocean, which she considered to be outside of the region of Kentucky. Paradowski Dep. at 103:11-104:21.

40. As required by AAFCO regulations, the back of every Champion package has an ingredient panel that lists all ingredients in order of weight.

INGREDIENTS

Deboned chicken, deboned turkey, chicken liver, turkey liver, chicken meal, catfish meal, whole green peas, red lentils, pinto beans, pollock meal, chicken fat, chickpeas, green lentils, whole yellow peas, lentil fiber, catfish, whole eggs, rainbow trout, herring oil, chicken heart, chicken kidney, turkey heart, turkey kidney, natural chicken flavor, chicken cartilage, dried kelp, whole pumpkin, whole butternut squash, kale, spinach, mustard greens, collard greens, turnip greens, carrots, apples, pears, freeze-dried chicken liver, freeze-dried turkey liver, pumpkin seeds, sunflower seeds, zinc proteinate, mixed tocopherols (preservative), chicory root, turmeric, sarsaparilla root, althea root, rosehips, juniper berries, dried lactobacillus acidophilus fermentation product, dried bifidobacterium animalis fermentation product, dried lactobacillus casei fermentation product.

Obgonna Dec. Ex. A (ACANA Regionals Meadowland).

INGREDIENTS

Deboned chicken, chicken giblets (liver, heart, gizzard), chicken meal, whole green peas, red lentils, pinto beans, deboned turkey, catfish meal, chicken fat, chickpeas, green lentils, whole yellow peas, lentil fiber, chicken cartilage, whole egg, herring oil, natural chicken flavor, turkey cartilage, dried kelp, whole pumpkin, whole butternut squash, kale, spinach, mustard greens, collard greens, turnip greens, carrots, apples, pears, freeze-dried chicken liver, freeze-dried turkey liver, zinc proteinate, mixed tocopherols (preservative), chicory root, turmeric, sarsaparilla root, althea root, rosehips, juniper berries, dried lactobacillus acidophilus fermentation product, dried bifidobacterium animalis fermentation product, dried lactobacillus casei fermentation product.

Id. Ex. B (ACANA Heritage Free-Run Poultry).

41. Plaintiff testified she read the ingredient panel prior to purchasing the packages of Champion dog food. Paradowski Dep. 80:21-23, 83:1-3, 99:16-19.

42. Champion's DogStar ACANA Regionals Meadowland and Heritage Free-Run Poultry packaging do not state that 100%, each, every or all ingredients are exclusively regional or local. Nor does Champion limit the word "regional" to a certain distance or location. Ogbonna Dec. at ¶ 15, Ex. A, B.

Other Statements on Champion's Packaging Purchased by Plaintiff:

43. The statements, "Provid[e] a concentrated source of virtually every nutrient your dog needs to thrive, naturally, without long lists of synthetic supplements – only zinc is added," and "Nourish as Nature Intended" appeared on DogStar ORIJEN packages in approximately 2016-

2017. Ogbonna Dec. at ¶¶ 24-25.

44. The statement “guaranteed to keep your dog healthy, happy, and strong”⁵ appears on the back of the DogStar ACANA Meadowland and Free-Run Poultry packages purchased by Plaintiff. Ogbonna Dec. at ¶ 26; Ex. A, B.

45. Plaintiff testified that Champion dog food kept her dogs happy and strong. Paradowski Dep. 91:18-23 (Q. Well, when your dogs ate the food, [were] they happy? A. I’m pretty sure dogs are happy when they eat any food, so yes. Q. And were your dogs strong? A. I guess, sure.).

46. The statement, “delivering nutrients naturally” appeared on the back of the DogStar ACANA packages purchased by Plaintiff in the context of this paragraph: “Mirroring nature, ACANA WholePrey™ foods feature a nourishing balance of poultry, organs and cartilage — all of which reflect the whole prey animal, DELIVERING NUTRIENTS NATURALLY. That’s why you won’t find long lists of synthetic additives in ACANA foods.”

Mirroring Mother Nature. ACANA WholePrey™ foods feature a nourishing balance of poultry, organs and cartilage plus whole eggs — all of which reflect the whole prey animal, DELIVERING NUTRIENTS NATURALLY.
That’s why you won’t find long lists of synthetic additives in ACANA foods.

Ogbonna Dec. ¶ 27; Ex. A, B.

47. The front of the 2016-2017 DogStar ACANA Meadowland and Free-Run Poultry packages state that zinc proteinate is the “one and only supplement” added to the formulas. Johnston Dec. ¶ 8; Ogbonna Dec. at Ex. A, B.

PLUS ZINC PROTEINATE - OUR ONE AND ONLY SUPPLEMENT

⁵ Following a meet and confer with Plaintiff’s counsel on April 6, 2021, Plaintiff agreed to drop her claims based on this statement.

48. Unlike other pet food companies that may have a long list of synthetic ingredients in their formulas, the only synthetic ingredient Champion used in the 2016-2017 DogStar ACANA Meadowland and Free-Run Poultry formulas was zinc proteinate, as disclosed on the front of the packaging and listed in the ingredient panel. Johnston Dec. ¶ 11; Ogbonna Dec. at Ex. A, B.

49. Plaintiff responded “No” when asked “did ACANA foods have a long list of synthetic additives?” Paradowski Dep. 121:20-122:1.

50. The nutrients provided to dogs from the consumption of Champion’s ACANA Meadowland and Free-Run Poultry dog food come from natural ingredients rather than synthetic ingredients (other than zinc proteinate). Johnston Dec. at ¶¶ 9-10.

51. Champion’s DogStar ACANA Regionals Meadowland and Heritage Free-Run Poultry packaging do not state that all or 100% of the ingredients Champion uses are “natural,” or “all-natural.” Ogbonna Dec. ¶ 16; Ex. A, B.

52. The image in the Paragraph 10 of the First Amended Complaint [ECF No. 54] is from a brochure that was only circulated to distributors and retailers and was generally not circulated to the public at-large. Ogbonna Dec. ¶ 28.

53. Plaintiff testified that she did not read and did not rely on any Champion brochures. Paradowski Dep. 33:5-8.

54. The “excluding...anything else nature didn’t intend your dog to eat” language from the brochure seen in Paragraph 10 of the First Amended Complaint does not appear on any packages of the diets Plaintiff purchased. Ogbonna Dec. ¶ 29; Ex. A, B.

55. Plaintiff also testified that she did not contact Champion prior to filing this lawsuit. Paradowski Dep. 129:18-20.

The Levels of Heavy Metals in Champion Dog Food are Not Unsafe:

56. Nearly all foods, whether for humans or pets, contain some levels of heavy metals, such as arsenic, cadmium, lead, and mercury. Poppenga Report at 7, 14-19, 27.

57. Arsenic, cadmium, lead, and mercury are naturally occurring elements that are ubiquitous in the environment and commonly found in dog foods. Poppenga Report at 4-6, 32-33 (Conclusion A).

58. The trace levels of arsenic, cadmium, lead, and mercury in Champion's dog food are naturally occurring within the ingredients used to make Champion's food. Poppenga Report at 4-6.

59. Champion does not add heavy metals as ingredients into its foods. Johnston Dec. at ¶ 12.

60. Several plaintiffs in related cases testified that they knew the Champion dog food they purchased would have heavy metals. *See* Deposition of Cammeo Renfro, attached to the Declaration of David A. Coulson as "**Exhibit 7**," at 35:7-37:2 (understanding fish has mercury, rice has arsenic, and stating "[t]here are naturally occurring heavy metals in food, and I completely understand that."); Deposition of Scott Wertkin, attached to the Declaration of David A. Coulson as "**Exhibit 8**," at 65:18-22 (Q: "Are you aware that heavy metals are naturally occurring?" A: I am. Q: Are you aware there is mercury in fish? A. I am."); Deposition of Barb McGraw, attached to the Declaration of David A. Coulson as "**Exhibit 9**," at 73:25-74:11 (testifying it is "common knowledge" that fish have mercury and "that there are pollutants in fish"); Deposition of Jennifer Song, attached to the Declaration of David A. Coulson as "**Exhibit 10**," at 89:4-22 (aware that "tuna has levels of mercury" and "salmon contain some levels of arsenic and mercury").

61. In 2005, the National Research Council (“NRC”) published a study in the Mineral Tolerance Animals, 2nd Revised Edition, 2005, that provided maximum tolerable limits (“MTLs”) for arsenic, cadmium, lead, and mercury in dog foods. Poppenga Report at 20-21.

62. In 2011, the FDA conducted its own review as to the levels of heavy metals in pet food, entitled the Target Animal Safety Review, and by way of this report, approved of and uses the following NRC MTLs to help guide regulatory decisions: (1) Arsenic 12,500 µg/kg (12.5 mg/kg); (2) Cadmium 10,000 µg/kg (10 mg/kg); (3) Lead 10,000 µg/kg (10 mg/kg); and (4) Mercury 267 µg/kg (.27 mg/kg). Poppenga Report at 21-22.

63. In 2002, the European Union (“EU”) had enacted regulations for the safe upper limits of arsenic (10 mg/kg), cadmium (2 mg/kg), mercury (.3 mg/kg), and lead (5 mg/kg) in pet foods. Poppenga Report at 22-23.

64. The levels of heavy metals in Champion’s dog food are well below the MTLs set by the NRC/FDA and the EU safety standards for heavy metals in pet food. Poppenga Report at 7, 12, 23-27, 33 (Conclusion E).

65. Eurofins’ testing at the request of Champion during the ordinary course of its business establishes that the levels of heavy metals in Champion’s dog food are well below the MTLs set by the NRC/FDA and the EU safety standards for heavy metals in pet food. Poppenga Report at 26-27.

66. Testing performed for Plaintiff by Iowa State University Veterinary Diagnostic Lab and Ellipse Analytics establish that the levels of heavy metals in Champion’s dog food are well below the MTLs set by the NRC/FDA and the EU safety standards for heavy metals in pet food. Poppenga Report at 23, 26.

67. When comparing the highest-reported level of arsenic, cadmium, lead, and mercury cited in the SAC for each of the diets purchased by the Plaintiff (NorthStar ORIJEN Regional Red: 1066.50 ug/kg of arsenic (8.53% of MTL); DogStar ORIJEN Regional Red: 123.10 ug/kg of cadmium (1.23% of MTL); NorthStar ORIJEN Regional Red: 21.70 ug/kg of mercury (8.13% of MTL); ORIJEN Puppy: 490.80 ug/kg of lead (4.91% of MTL)), these levels are a fraction of any known MTL for heavy metals in dog food. SAC ¶ 7; Poppenga Report at 26.

68. The highest-reported levels of arsenic, cadmium, lead, and mercury in Champion diets cited in the SAC, and the levels of arsenic, cadmium, lead, and mercury in ACANA Meadowland and Free-Run Poultry cited in the SAC, are well below the EU standards. SAC ¶ 7; Poppenga Report at 26.

69. Ellipse Analytics tested hundreds of dog foods and found the presence of heavy metals in almost all of them. Deposition of Sean Callan dated May 9, 2019 (“Callan Dep. Vol. 1”), attached to the Declaration of David A. Coulson as “**Exhibit 11**,” at 53:12-16; 54:16-55:3.

70. At Champion’s request, Eurofins tested 65 samples of competitor dog foods (including a sample of a diet Plaintiff purchased after discontinuing to purchase Champion dog food) for arsenic, cadmium, lead, and mercury, and found each sample had metals present at safe levels. Poppenga Report at 13-19.

71. The levels of naturally occurring heavy metals in ACANA and ORIJEN dog food diets do not present a health risk to dogs. Poppenga Report at 33 (Conclusion D).

72. Plaintiff’s expert Dr. Gary Pusillo did not identify any known safety standard or guidelines applicable to canines or to dog food that Champion’s dog food exceeds. Deposition of

Dr. Gary Pusillo dated April 26, 2019⁶ (“Pusillo Dep. Vol. 1”), attached to the Declaration of David A. Coulson as “**Exhibit 12**,” at 11:21-12:22; 13:21-14:12; 31:4-8; Deposition of Dr. Gary Pusillo dated May 31, 2019 (“Pusillo Dep. Vol. 2”), attached to the Declaration of David A. Coulson as “**Exhibit 13**,” at 86:8-17; 93:5-18; 94:4-12.

73. Plaintiff’s expert Dr. Pusillo is not a pet food safety expert or a toxicologist. Pusillo Dep. Vol. 1 36:23-37:5; 130:6-14; 143:22-24; Pusillo Dep. Vol. 2 67:21-23.

The Levels of BPA Found in Champion’s Dog Food Would Not Harm a Dog:

74. Bisphenol-A (BPA) is a chemical molecule that is produced for use primarily in the production of polycarbonate plastics and epoxy resins. Poppenga Report at 27.

75. Polycarbonate plastics and epoxy resins frequently appear in water bottles, infant bottles, CDs, medical devices, and lacquers to coat products such as food cans and bottle tops. Poppenga Report at 27.

76. Humans and animals are most commonly exposed to BPA through their diet, as BPA tends to leach into food and liquid. Poppenga Report at 27-28.

77. BPA is also prevalent in the environment, and many studies have measured levels of BPA in our air, dust, and water. Poppenga Report at 27-28.

78. Given BPA’s ubiquitous presence in our environment, humans and animals are exposed to BPA daily through a variety of pathways. Poppenga Report at 27-28.

79. Champion does not add BPA as an ingredient in its dog food, including ACANA Meadowland and Free-Run Poultry. Johnston Dec. at ¶ 13.

⁶ The Parties agreed to consolidate discovery among related cases and agreed that depositions of the Parties’ fact and expert witnesses taken in other actions would be applicable to this action as though it were taken in this action.

80. Champion's DogStar ACANA Regionals Meadowland and Heritage Free-Run Poultry packaging do not state that it is "BPA free," or words to that effect. Ogbonna Dec. ¶ 17, Ex. A, B.

81. Ellipse Analytics, which has been engaged by Plaintiff, utilized a 30 ppb Level of Quantification ("LOQ") testing criteria and found that a third of several hundred dog foods tested had BPA in them. Callan Dep. Vol. 1 at 53:12-16; 54:10-15; 55:4-8.

82. Plaintiff's expert Sean Callan testified that his laboratory would have found more dog foods with BPA in it if he used a more sensitive test. Callan Dep. Vol. 1 at 59:11-16.

83. Another laboratory utilized by Plaintiff to test for BPA, ExperTox, did not detect any BPA in any of the 38 samples of Champion's dog food it tested, which included two samples each of ACANA Regionals Meadowland and ACANA Free-Run Poultry. Pusillo Dep. Vol. 1. 19:15-17; 21:11-18; 43:2-5; 124:9-13; Pusillo Dep. Vol. 2. 111:16-112:1; *see* Pusillo Expert Report, titled "Test Results of Champion Petfoods USA, Inc. and Champion Petfoods LP for Heavy Metals and Plasticizers," dated April 1, 2019 (ECF No. 108-29) at 26.

84. Eurofins laboratory, which was engaged by Champion, tested the diets purchased by the Plaintiff utilizing a 5 ppb LOQ for BPA, which would read as zero under Ellipses's 30 ppb LOQ. Poppenga Report at 29-30.

85. Eurofins' BPA tested 24 samples of ORIJEN and ACANA dog food and reported that 20 out of the 24 samples had non-detectable levels of BPA because the levels of BPA (if any) were all below the 5 ppb LOQ. Poppenga Report at 29-30.

86. Eurofins' BPA testing also showed that samples of ACANA Heritage Free-Run Poultry and ACANA Regionals Meadowlands contained barely detectable levels of 5.30 and 5.90 ppb of BPA, respectively. Poppenga Report at 30.

87. Champion tested samples of 10 competitor dog food brands for BPA and found that 4 out of 10 samples also had detectable levels of BPA. Poppenga Report at 30-31.

88. The levels of BPA, purportedly in Champion's dog food according to the SAC, would not cause an adverse effect in a dog. Poppenga Report at 33 (Conclusion G).

89. Both of Plaintiff's experts, Dr. Pusillo and Sean Callan, did not opine on what levels of BPA would be harmful to dogs. Pusillo Dep. Vol. 1. 26:12-16; 108:22-109:1; Pusillo Dep. Vol. 2. 112:5-13; Callan Dep. Vol. 1. 84:17-85:18.

90. Plaintiff's expert, Dr. Pusillo, is not a BPA expert and gave no opinion on the source of BPA (*i.e.* how it could have come to be present) in Champion's dog food. Pusillo Dep. Vol. 1. 15:11-12; 15:14-16; 15:22-25; Pusillo Dep. Vol. 2 at 112:5-13.

Dated: April 15, 2021

GREENBERG TRAURIG, LLP

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